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OFFICE OF PETITIONS

In re Application of	:	ON PETITION
Little et al.	:	
Application No. 09/975,427	:	
Filed: October 10, 2001	:	
Atty Docket No. S145-USA	:	

This is a decision in response to the petition under 37 CFR 1.137(b), filed July 21, 2005, to revive the above-identified application.

The petition is **granted**.

The above-identified application became abandoned for failure to file a complete and proper appeal brief after filing a Notice of Appeal. Applicant filed a Notice of Appeal on January 6, 2004. Thereafter, Applicant was given two (2) months within which to file an appeal brief. Extensions of time under 37 CFR 1.136 were available. Applicant filed an appeal brief on March 18, 2004; however, the appeal brief failed to comply with the requirements of 37 CFR 1.192(c). Applicant was so notified in a Notice of Non-Compliant Amendment ("Notice"), mailed June 14, 2004. The Notice informed Applicant that a reply must to the Notice must have been filed within the longest of three (3) periods: 1) one month or 30 days from the mailing of the Notice; 2) two months from the mailing of the Notice of Appeal, or 3) within the period for reply to the [final rejection]. Applicant failed to timely and/or properly reply to the Notice. Since no claims were allowed, the appeal was dismissed, and the proceedings as to the rejected claims were terminated, the application became abandoned on March 6, 2004¹. See, 37 CFR 1.192 and MPEP 1206².

¹ If there are no allowed claims, the application is abandoned as of the date the brief was due. If the time for filing a brief has passed and the application has consequently become abandoned, the applicant may petition to revive the application, as in other cases of abandonment, and to reinstate

Applicant files the instant petition and continuation application.

Having found that all requirements for the filing of a grantable petition under 37 C.F.R. §1.137(b) have been met, this Petition is hereby **Granted**.

This application is being revived for purposes of continuity only and since continuity has been established by this decision reviving the application, the application is again abandoned in favor of the Continuation Application, No. 11/352,168, filed February 13, 2006.

This application is being referred to the files repository.

Telephone inquiries concerning this matter should be directed to the undersigned at 571-272-3232.


Derek L. Woods
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Office of Petitions

the appeal; if the appeal is dismissed, but the application is not abandoned, the petition would be to reinstate the claims and the appeal, but a showing equivalent to that in a petition to revive under 37 CFR 1.137 is required. In either event, a proper brief must be filed before the petition will be considered on its merits. (Emphasis supplied).

² Although failure to file the brief within the permissible time will result in dismissal of the appeal, if any claims stand allowed, the application does not become abandoned by the dismissal, but is returned to the examiner for action on the allowed claims. See MPEP § 1215.04.